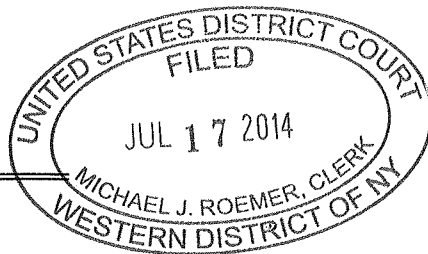


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



Revised 07/07 WDNY

Terrence Duncan

Jury Trial Demanded: Yes ☐ No ☐

Name(s) of Plaintiff or Plaintiffs

-VS-

LAND MARK CONSTRUCTION
George Bryant

Name of Defendant or Defendants

DISCRIMINATION COMPLAINT

-CV-

14 CV 577-9

You should attach a copy of your **original Equal Employment Opportunity Commission (EEOC) complaint**, a copy of the Equal Employment Opportunity Commission **decision**, AND a copy of the **"Right to Sue"** letter you received from the EEOC to this complaint. Failure to do so may delay your case.

Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.

This action is brought for discrimination in employment pursuant to (*check only those that apply*):

☒ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub.L.No. 102-166) (race, color, gender, religion, national origin).

NOTE: In order to bring suit in federal district court under Title VII, you **must first obtain a right to sue letter** from the Equal Employment Opportunity Commission.

☒ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621-634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub.L.No. 99-592, the Civil Rights Act of 1991, Pub.L.No. 102-166).

NOTE: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you **must first file charges** with the Equal Employment Opportunity Commission.

☐ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112-12117 (amended by the Civil Rights Act of 1991, Pub.L.No. 102-166).

NOTE: In order to bring suit in federal district court under the Americans with Disabilities Act, you **must first obtain a right to sue letter** from the Equal Employment Opportunity Commission.

JURISDICTION is specifically conferred upon this United States District Court by the aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991, Pub.L.No. 102-166, and any related claims under New York law.

In addition to the federal claims indicated above, you may wish to include New York State claims, pursuant to 28 U.S.C. § 1367(a).

☒ New York State Human Rights Law, N.Y. Exec. Law §§ 290 to 297 (age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status).

PARTIES

1. My address is: 590 Norfolk ave Buffalo, NY 14215

My telephone number is: (716) 533-7802 - (716) 464-3254

2. The name of the employer(s), labor organization, employment agency, apprenticeship committee, state or local government agency who I believe discriminated against me is/are as follows:

Name: LAND MARK CONSTRUCTION - George Bryant

Number of employees: 1

Address: 203 Fillmore ave P.O. Box 616 Tonawanda NY

3. (If different than the above), the name and/or the address of the defendant with whom I sought employment, was employed by, received my paycheck from or whom I believed also controlled the terms and conditions under which I were paid or worked. (For example, you worked for a subsidiary of a larger company and that larger company set personnel policies and issued you your paycheck).

Name: _____

Address: _____

CLAIMS

4. I was first employed by the defendant on (date): 10/4/13

5. As nearly as possible, the date when the first alleged discriminatory act occurred is: 10/9/13
6. As nearly as possible, the date(s) when subsequent acts of discrimination occurred (if any did): Every day 10/4/13 - 10/25/13
7. I believe that the defendant(s)
- a. Are still committing these acts against me.
- b. ✓ Are not still committing these acts against me.
- (Complete this next item **only** if you checked "b" above) The last discriminatory act against me occurred on (date) 10/25/13
8. (Complete this section **only** if you filed a complaint with the New York State Division of Human Rights)
- The date when I filed a complaint with the New York State Division of Human Rights is 11/19/13
(estimate the date, if necessary)
- I filed that complaint in (identify the city and state): Buffalo NY
- The Complaint Number was: 101656 20
9. The New York State Human Rights Commission did ✓ /did not _____ issue a decision. (**NOTE:** If it **did** issue a decision, you **must attach** one copy of the decision to **each** copy of the complaint; failure to do so will delay the initiation of your case.)
10. The date (if necessary, estimate the date as accurately as possible) I filed charges with the Equal Employment Opportunity Commission (EEOC) regarding defendant's alleged discriminatory conduct is: 11/19/13
11. The Equal Employment Opportunity Commission did ✓ /did not _____ issue a decision. (**NOTE:** If it **did** issue a decision, you **must attach** one copy of the decision to **each** copy of the complaint; failure to do so will delay the initiation of your case.)
12. The Equal Employment Opportunity Commission issued the attached Notice of Right to Sue letter which I received on: 6/30/14. (**NOTE:** If it

did issue a Right to Sue letter, you **must attach** one copy of the decision to **each** copy of the complaint; failure to do so will delay the initiation of your case.)

13. I am complaining in this action of the following types of actions by the defendants:

- a. _____ Failure to provide me with reasonable accommodations to the application process
- b. _____ Failure to employ me
- c. ☒ Termination of my employment
- d. _____ Failure to promote me
- e. _____ Failure to provide me with reasonable accommodations so I can perform the essential functions of my job
- f. _____ Harassment on the basis of my sex
- g. ☒ Harassment on the basis of unequal terms and conditions of my employment
- h. _____ Retaliation because I complained about discrimination or harassment directed toward me
- i. _____ Retaliation because I complained about discrimination or harassment directed toward others
- j. _____ Other actions (please describe) _____

14. Defendant's conduct is discriminatory with respect to which of the following (*check all that apply*):

- a. ☒ Race
- b. _____ Color
- c. _____ Sex
- d. _____ Religion
- e. _____ National Origin
- f. _____ Sexual Harassment
- g. ☒ Age 3/11/68 Date of birth
- h. _____ Disability
Are you incorrectly perceived as being disabled by your employer?
_____ yes _____ no

15. I believe that I was ☒/was not _____ **intentionally** discriminated against by the defendant(s).

16. I believe that the defendant(s) is/are _____ is not/are not ☒ still committing these acts against me. (If you answer is that the acts are not still being committed, state when: _____ and why the defendant(s) stopped committing these acts against you: I don't work there anymore

17. A copy of the charge to the Equal Employment Opportunity Commission is attached to this complaint and is submitted as a brief statement of the facts of my claim.

(NOTE: You must attach a copy of the original complaint you filed with the Equal Employment Opportunity Commission and a copy of the Equal Employment Opportunity Commission affidavit to this complaint; failure to do so will delay initiation of your case.)

18. The Equal Employment Opportunity Commission (check one):

☐ has not issued a Right to sue letter

☒ has issued a Right to sue letter, which I received on 6/30/14

19. State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

Almost everyday my job was threatened, my boss George Bryant would say things to me that were not work related at all. Racial comments & statements were made by George daily to a point where I felt like not returning to work. At one point days before I was to get with them fired, I was told I would be the fall guy for our crew. The day I received my badge I only had in a matter of an hour then I was fired my rebuttal can explain in detail

FOR LITIGANTS ALLEGING AGE DISCRIMINATION

20. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct _____ 60 days or more have elapsed ☒ less than 60 days have elapsed

FOR LITIGANTS ALLEGING AN AMERICANS WITH DISABILITIES ACT CLAIM

21. I first disclosed my disability to my employer (or my employer first became aware of my disability on _____

22. The date on which I first asked my employer for reasonable accommodation of my disability is _____
23. The reasonable accommodations for my disability (if any) that my employer provided to me are: _____
24. The reasonable accommodation provided to me by my employer were _____/were not _____ effective.

WHEREFORE, I respectfully request this Court to grant me such relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.

Dated: 6/12/14

Terence Duncan

Plaintiff's Signature



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

TERRENCE DUNCAN,

Complainant,

v.

LANDMARK CONSTRUCTION COMPANY, INC.,
GEORGE BRYANT,

Respondents.

DETERMINATION AND
ORDER AFTER
INVESTIGATION

Case No.
10165620

Federal Charge No. 16GB400657

On 11/19/2013, Terrence Duncan filed a verified complaint with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to employment because of race/color in violation of N.Y. Exec. Law, art. 15 (Human Rights Law).

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that the respondents have engaged in or are engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The Division's rules of practice (9 NYCRR §465.6 (b)) empower the Division Regional Director with the assistance of staff to conduct investigations "by field visit, written or oral inquiry, conference, **or any other method or combination** thereof deemed suitable in the discretion of the regional director [emphasis added]." In the instant case we used the investigatory techniques of written and oral inquiry.

The record does not contain evidence which supports a belief that Respondent unlawfully discriminated against Complainant because of his race. The record shows that Respondent employed a diverse workforce which was maintained throughout the job in question. The record does not reveal that Complainant was subjected to a hostile work environment which requires severe and pervasive discriminatory conduct. There is no evidence race was the determining factor in Complainant's termination as two individuals were hired subsequent to his termination one of which was the same race as Complainant.


The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

Your charge was also filed under Title VII of the Civil Rights Act of 1964. Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To secure review, you must request it in writing, within 15 days of your receipt of this letter, by writing to EEOC, New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004-2112. Otherwise, EEOC will generally adopt our action in your case.

Dated: May 16, 2014
Buffalo, New York

STATE DIVISION OF HUMAN RIGHTS

By: 
Tasha E. Moore
Regional Director

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

TERRENCE DUNCAN,
Complainant,

v.

LANDMARK CONSTRUCTION COMPANY, INC.,
GEORGE BRYANT,
Respondents.

AFFIDAVIT OF SERVICE

Case No.
10165620

Federal Charge No. 16GB400657

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

Holly M. Korzen, being duly sworn, deposes and says, that he/she is over the age of 18 years; that he/she is employed by the New York State Division of Human Rights; that on May 16, 2014, he/she served the within DETERMINATION upon:

Complainant

Terrence Duncan
590 Norfolk Avenue
Buffalo, NY 14215

Respondent

Landmark Construction Company, Inc.
Attn: Thomas R. Holler, President
P.O. Box 616
203 Fillmore Ave.
Tonawanda, NY 14151-0616

Respondent

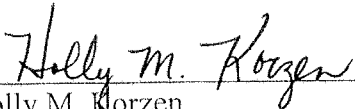
George Bryant
Landmark Construction Company, Inc.
P.O. Box 616
Tonawanda, NY 14151-0616

Respondent Attorney

Willard M. Pottle, Jr., Esq.
350 Main St., 2405 Main Place Tower
Buffalo, NY 14202

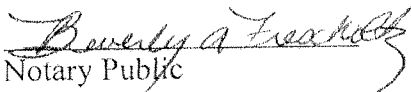
by personally placing true copies of the same, securely enclosed in postpaid wrappers in the post office box/depository under the exclusive care and custody of the United States Postal Service at 65 Court Street, Buffalo, New York.

Dated: May 16, 2014
Buffalo, New York



Holly M. Korzen
Secretary I

Sworn before me this
16th day of May, 2014



Notary Public

BEVERLY A. FRESCHOLTZ
Notary Public, State of New York
No. 01FR6187237
Qualified in Erie County
My Commission Expires May 19, 2016



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

TERRENCE DUNCAN,

Complainant,

v.

LANDMARK CONSTRUCTION COMPANY, INC.,
GEORGE (LNU),

Respondents.

VERIFIED COMPLAINT
Pursuant to Executive Law,
Article 15

Case No.

10165620

Federal Charge No. 16GB400657

I, Terrence Duncan, residing at 590 Norfolk Avenue, Buffalo, NY, 14215, charge the above named respondents, whose address is P.O. Box 616, Tonawanda, NY, 14151-0616 with an unlawful discriminatory practice relating to employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of race/color.

Date most recent or continuing discrimination took place is 10/25/2013.

The allegations are:

1. I am African American. Because of this, I have been subject to unlawful discriminatory actions.
2. On or about 10/04/2013, I was hired by the above respondent and assigned to the Ferry Grider Complex worksite where I last held the job title of carpenter. My supervisor was George (LNU), Caucasian. The majority of the crew was Caucasian.
3. George (LNU) subjected me to differential treatment in an attempt to set me up to fail due to my race. For example, he threatened me with termination several times each day without cause but never threatened Caucasian employees with termination although they came in late and made mistakes. George also harassed me by hiding the screw gun he had assigned to me; He would assign me one job, take me off it and assign me other tasks, and then ask why the original job wasn't done; His instructions changed minute to minute. In addition, George (LNU) used offensive racial slurs, such as "nigga" when talking to me and said on one occasion, "You guys can get away with that type of sh*t, nigga," On another occasion, he said, "These niggas are

clever, they stole the copper and the tools" when talking about people in the neighborhood of the work site.

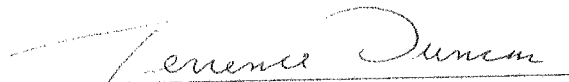
4. In early October 2013, George (LNU) told me and Al (African American) that we were both fired. He then told me I wasn't fired and could return but that I would be the fall guy thereafter. George (LNU) fired Al (LNU) without cause and Al is a certified carpenter as well as an instructor for Section III.

5. On 10/25/2013, George terminated my employment although I had done nothing wrong. I believe respondent subjected me to differential treatment and termination due to my race/color.

Based on the foregoing, I charge respondents with an unlawful discriminatory practice relating to employment because of race/color, in violation of the New York State Human Rights Law (Executive Law, Article 15), Section 296.

I also charge the above-named respondents with violating Title VII of the Civil Rights Act of 1964, as amended (covers race, color, creed, national origin, sex relating to employment). I hereby authorize SDHR to accept this verified complaint on behalf of the U.S. Equal Employment Opportunity Commission (EEOC) subject to the statutory limitations contained in the aforementioned law(s).

I have not commenced any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.


Terrence Duncan

STATE OF NEW YORK)
COUNTY OF) SS:

Terrence Duncan, being duly sworn, deposes and says: that he/she is the complainant herein; that he/she has read (or had read to him or her) the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

Terrence Duncan
Terrence Duncan

Subscribed and sworn to
before me this 19 day
of November, 2013

Beverly A. Frescholtz
Signature of Notary Public

BEVERLY A. FRESCHOLTZ
Notary Public, State of New York
No. 01FR6187237
Qualified in Erie County
My Commission Expires May 19, 2016

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Terrence Duncan
590 Norfolk Avenue
Buffalo, NY 14215

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2014-00657

Holly M. Woodyard,
State & Local Coordinator

(212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

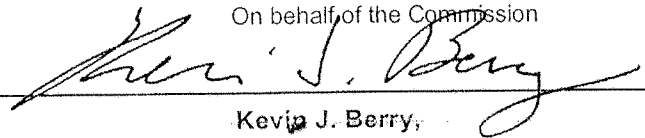
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission


Kevin J. Berry,
District Director

June 26, 2014

(Date Mailed)

Enclosures(s)

CC:

LANDMARK CONSTRUCTION COMPANY, INC.
Attn: Director of Human Resources
203 Fillmore Avenue
P.O. Box 616
Tonawanda, NY 14151